



§~101

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision : 08.05.2023*

+ **ITA 262/2023 & CM APPL. 23108/2023**

PR. COMMISSIONER OF INCOME TAX -CENTRAL-1 Appellant
 Through: Mr Ruchir Bhatia, Sr. Standing counsel
 with Shri Pratyakash Gupta, Advocate
 versus

SMC POWER GENERATION LTD. Respondent
 Through: None

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 23108/2023 *[Application filed on behalf of the appellant seeking condonation of delay of 300 days in re-filing the appeal]*

1. This is an application moved on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeal.
- 1.1 According to the appellant/revenue, there is a delay of 300 days.
2. For the reasons given in the application, the delay is condoned.
3. The application is disposed of, in the aforesaid terms.

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4. This appeal concerns Assessment Year (AY) 2008-09.
5. The appellant/revenue seeks to assail the order dated 25.03.2021 passed by the Income Tax Appellate Tribunal [in short "the Tribunal"].
6. Learned counsel for the appellant/revenue says that the issue raised in the present appeal is covered by the judgment of the coordinate bench dated 18.09.2017 passed in ITA No. 603/2017.
7. We may note that the only issue which arises in the present appeal concerns addition made on account of unexplained credit found in the books of the



respondent/assessee *qua* share application money.

7.1 The amount was sought to be added by the Assessing Officer(AO) under Section 68 of the Income Tax Act, 1961 [in short 'the Act']. The amount was quantified at Rs.30,00,00,000/-.

8. An order was passed, in the first instance, by the Assessing Officer (AO) on 31.03.2014, by framing an assessment order under Section 143(3) of the Act.

9. The Commissioner of Income Tax(CIT), in exercise of his powers under Section 263 of the Act, *via* order dated 02.03.2016 set aside the said order.

10. This resulted in the AO passing the second assessment order dated 26.12.2016.

11. However, the Tribunal *via* order dated 31.01.2017 set aside the order dated 02.03.2016 passed by the CIT, referred to above, under Section 263 of the Act.

12. It is an appeal against this order, which was preferred by the appellant/revenue, that was dismissed by a coordinate bench of this court *via* order dated 18.09.2017 passed in ITA No. 603/2017.

13. Via the impugned order, the Tribunal has, thus, set aside, in effect, the second assessment order dated 26.12.2016.

14. Thus, having regard to the aforesaid facts and circumstances of this case, according to us, no substantial question of law arises for consideration.

15. The appeal is, accordingly, closed.

16. Parties will act based on the digitally signed copies of the order.

17. The Registry will dispatch a copy of the order to the respondent/assessee at the address given in the memo of parties.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

8th MAY, 2023 / as